

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 92 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? -
 2. To be referred to the Reporter or not? - :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? -
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? -
 5. Whether it is to be circulated to the Civil Judge? : NO
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HEIRS OF MOHMEDBHAI NURBHAI

Versus

GORIBIBI WD/O UMARJI HASANJI

Appearance:

MR SB VAKIL for Petitioner
MR DD VYAS for Respondent No. 1
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 16/03/2000

ORAL JUDGEMENT

This Second Appeal has been preferred against the judgment and decree dated 29-10-79 passed in Regular Civil Appeal No. 297 of 1997 by the Extra Assistant Judge, Surat whereby Regular Civil Appeal No. 297/77 has been dismissed and confirmed the findings recorded by the

Jt. Civil Judge (JD), Surat in the judgment dated 22-10-1977 in Regular Civil Suit No. 1094/71.

2. One Abramji Jiwaji was owner of the property bearing No.3466 of Ward No. 7, Surat. After death of Abramji Jiwaji the name of his grand son Ibrahim was recorded and said Ibrahim died in the year 1936 unmarried leaving behind him his mother bai Jivabhai and sister Aminaben and hence his mother bai Jivabhai and sister Aminaben became the owner of the suit property. Said bai Jivabhai died in the year 1965 and hence Aminaben became the sole owner of the suit property who died on 3-5-1971 and it is stated by the plaintiff that bai Aminaben had not made any arrangement of the suit property before her death. She alleged that she is the mother's sister of Bai Amina and so she has become the owner of the suit property as an heir of Bai Amina under the Muslim Sariyat Law and so she is entitled to that property. She has also alleged that bai Amina had gifted the portion of the suit property to the defendant on 13-12-1970 and written declaration was also made by Bai Amina on 22-4-1971 to that effect. It is further stated that Bai Amina was residing on the ground floor of the suit property and she was in actual possession of the suit property and she has not given possession of the said portion to Umarji Hasanji to whom that portion of the property is said to have been gifted. It is also stated that Bai Amina collected the rent from tenants till she died and she also paid municipal tax till her death. Oral gift dated 13-12-1970 and the written declaration dated 22-4-1971 are illegal and invalid and that declaration was made by Bai Amina on her death bed sickness and so it is a gift known as Marz-ul-mautand and the same was not legal and valid.

3. The suit was contested by the defendant though it was an admitted fact that Aminaben was the sole owner of the suit property. It was denied that the plaintiff is the father's sister of Aminabibi and Bai Amina had not left behind her any heir known under the Muslim Law and the written declaration dated 22-4-1971 exh. 59 regarding the gift was only got up and fabricated document.

4. The lower court after going through the evidence on record dismissed the suit of the plaintiff by the judgment and decree dated 22-8-1977. Being aggrieved and dissatisfied by the said judgment and decree dated 22-8-1977, the plaintiff preferred Regular Civil Appeal No.297 of 1977. The lower Appellate Court framed following three issues :

(i) Whether the trial Court erred in holding
that the plaintiff has failed to prove
that Bai Bibi the original plaintiff was
the heir of Bai Amina ?

(ii) Whether the trial Court erred in holding
that the deceased Bai Amina made a
legal and valid gift of the suit property
in favour of the defendants ?

(iii) Whether the trial Court erred in holding
that the plaintiff had failed to prove
that the gift in question was made by Bai
Amina during the her death illness ?

5. The lower Appellate Court came to the conclusion
that the evidence on record was not sufficient to hold
that Bai Bibi was the sister of father of Bai Amina and
the lower Court's finding on this point was confirmed.
It was also found that two requirements of Section 149 of
the Mohammedan Act for direct gift i.e. there was a
declaration of a gift and an acceptance thereof are ample
proved from this document exh.59. The lower Appellate
Court also found that the doner made gift in favour of
the defendant on 23-12-1970.

6. But the main question is as to whether Bai Bibi
was the sister of father of bai Amina. The Courts below
have recorded concurrent finding that there was no
sufficient evidence on record to hold that bai Bibi was
the sister of father of Bai Amina. Bai Bibi was not
sister of father of Bai Amina and hence she was not
entitled to anything as claimed. The other two questions
are mixed questions of facts and law.

7. The learned counsel for the appellant could not
point out anything to show this appeal involves a
substantial question of law. As such, this appeal has no
merits and the same is liable to be dismissed.

8. Accordingly, this appeal is dismissed. Rule is
discharged with no order as to costs. Interim relief, if
any, stands vacated.

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/JVSatwara/